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SENSITIVE
SIPDIS

STATE FOR EB/TPP/IPE (TRMCGOWAN/JURBAN) AND EUR/UMB
STATE PLEASE PASS TO USTR FOR PBURKHEAD/JGROVES/RBAE
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E.O. 12958: DECL: N/A
TAGS: [ETRD](#) [KIPR](#) [ECON](#) [UP](#)
SUBJECT: SPECIAL 301 DEMARCHE: UKRAINIAN OFFICIALS
HIGHLIGHT KEY IPR PROBLEMS

REF: STATE 42733

SENSITIVE BUT UNCLASSIFIED; NOT FOR INTERNET PUBLICATION.

¶1. (U) Deputy Econ Counselor informed the GOU on April 29 that Ukraine would remain on the Watch List in this year's Special 301 Report. We delivered reftel points to Volodymyr Dmitrishin, Acting Chairman of the State Department of Intellectual Property (SDIP, Ukraine's coordinating agency for IPR issues), and Valentin Chebotaryov, SDIP Deputy Chairman.

¶2. (U) Dmitrishin and Chebotaryov expressed their appreciation for our bilateral cooperation on IPR issues. Chebotaryov said that, while the GOU had not accomplished everything it had hoped, there had been real progress on IPR enforcement in recent years, as the Special 301 process demonstrated. The GOU reps made substantive remarks on the following issues:

Internet Piracy

¶3. (U) Chebotaryov asked for continued USG assistance and cooperation to tackle internet piracy, which he described as a priority for Ukraine. Chebotaryov said he thought there needed to be an amendment to current laws in order to ensure that internet service providers (ISPs) could be held legally responsible for hosting pirated material.

Courts

¶4. (SBU) Chebotaryov identified the courts as a continued source of problems on enforcement. He said that SDIP's inspectors (who are quasi-law enforcement officials and do inspections at large markets) were almost never satisfied with the rulings handed down by judges in their cases. Dmitrishin added that SDIP was still encouraging the Supreme Court to hold a plenary session devoted to IPR, and internet piracy in particular. (Comment: The lack of clear guidance from the Supreme Court has long been a problem for judicial enforcement of IP rights. We continue to encourage the issuance of such guidance in appropriate fora, such as USG-funded IPR workshops for judges. End comment.)

Physical Piracy

15. (U) Chebotaryov expressed concern that the current economic crisis in Ukraine would drive more consumers to (cheaper) counterfeit goods. He also said SDIP was frustrated that some rights holders continued to manage their Ukraine business through Moscow, making it harder for Ukrainian authorities to get the documents they needed to prosecute piracy cases.

Software -----

16. (SBU) Chebotaryov recognized that the GOU had not done enough to legalize its own software and expressed SDIP's commitment to addressing the problem, noting that SDIP was trying to lead by example by ensuring that 100 percent of its own software was legal. Chebotaryov described the problem as a "budget issue" and said that, due to the government's budget crisis, progress would not come quickly. He added that SDIP was developing a guide for businesses to help them ensure that their software was legal.

Holograms -----

17. (U) In response to our points on the need to improve Ukraine's hologram sticker program for optical discs, Chebotaryov said SDIP was committed to increasing the system's transparency, in particular by allowing rights holders access to all hologram applications. Chebotaryov promised that SDIP would continue to work closely with

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industry to make these changes.

Organizational Issues -----

18. (U) Dmitrishin noted that SDIP was examining possible institutional changes to improve IPR enforcement, and asked for more information on our National Intellectual Property Rights Coordination Center, which could serve as a model for Ukraine. (Comment: We have already provided some background info on the IPR Center. We should also look for a future opportunity for SDIP leadership to discuss organizational issues with an ICE official from the IPR Center. End comment.)

TAYLOR